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What the Fair Housing Amendments Act of 1988 Means for People With Mental Disabilities

by

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In 1968, in the wake of Dr. Martin Luther King's assassination, Congress enacted Title VIII of the Civil Rights Act of 1968, popularly called the Fair Housing Act, to end racial segregation in housing.[1] Twenty years later, Congress amended the law to extend the principle of equal housing opportunity to people with disabilities, enacting the Fair Housing Amendments Act of 1988 (the "Act").[2]

Painting with a broad brush, Congress made it unlawful for public and private entities to discriminate against people with disabilities in the sale, rental or advertising of dwellings, in the provision of brokerage services, in the availability of residential real-estate transactions, in the implementation of land-use and zoning laws and in the enforcement of restrictive covenants and deeds. This expansive law reaches every housing practice that segregates people with disabilities from their communities or otherwise limits their choices to live where they please.

This article analyzes the Act as it applies to this newly protected class. It begins with a discussion of the purposes, construction and overall structure of the Act, followed by a section-by-section analysis of pertinent amended provisions.

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but who are so perceived. For example, the definition includes those who are perceived to have AIDS, whether or not they do and whether or not they test positive. The HUD regulations reflect this discussion.[22]

The use of the § 504 definition also means that a housing provider must treat applicants with disabilities in the same way as any other applicant. The provider is not to assume that because an applicant uses a wheelchair or has a visual impairment or has a history of mental illness that he or she will not fulfill the obligations of tenancy.[23]

B. Exclusion of Certain Drug Abusers from the Definition of Handicap

Current illegal users of or addicts to controlled substances, as defined by the Controlled Substances Act, are not considered to be handicapped persons under the Act.[24] This exclusion, however, does not eliminate protection for individuals who take drugs for a medical condition under the care of, or by prescription from a physician.[25] Similarly, recovering drug abusers in a treatment program would not be excluded as long as they do not currently use illegal drugs. The House report explains:

> The Committee does not intend to exclude individuals who have recovered from an addiction or are participating in a treatment program or a self-help group such as Narcotics Anonymous. Just like any other person with a disability, such as cancer or tuberculosis, former drug-dependent persons do not pose a threat to a dwelling or its inhabitants simply on the basis of status. Depriving such individuals of housing, or evicting them would constitute irrational discrimination that may seriously jeopardize their continued recovery.
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> Individuals who have been perceived as being a drug user or an addict are covered under the definition of handicap if they can demonstrate that they are regarded as having an impairment and that they are not currently using an illegal drug.[26]

C. Definition of "Aggrieved Person"

The statute next defines "aggrieved person" to include any person who

(1) claims to have been injured by a discriminatory housing practice; or

(2) believes that such person will be injured by a discriminatory housing practice that is about to occur.

With this definition, the Congress intended to include advocacy organizations and providers of housing for people with disabilities in addition to the consumers themselves. HUD's regulations reflect the breadth of this term.[27]

In addition to these definitions in the Act, in its regulations HUD defined a number of additional terms. These definitions are discussed below in connection with the second part of the statute, which expanded the list of discriminatory housing practices.